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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of:

Petition of the Association of
Communications Enterprises
for Preemption of Montgomery,
Alabama Tax Policy

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FCC MAIL ROOM

CC Docket No. 01-40

COMMENTS OF THE ALABAMA LEAGUE OF MUNICIPALITIES

IN OPPOSITION

TO PETITION FOR PREEMPTION AND DECLARATORY RULING

The Alabama League of Municipalities (League) files this letter in opposition to the above-captioned petition of the Association of Commercial Enterprises (ASCENT) for preemption of the City of Montgomery's telecommunications license and privilege tax. The City of Montgomery has filed an excellent brief discussing the legal issues raised by this petition and the League files simply to make the Commission aware of the importance of this issue to municipalities across Alabama.

Under Alabama law, municipalities have the authority pursuant to § 11-51-90, Code of Alabama, 1975, to determine for themselves the amount of a license to impose on businesses. Our legislature, though, has limited municipal power to assess these fees on certain, specific businesses that are listed in the Code.

Montgomery's license fee is based on § 11-51-128, Code of Alabama, 1975. This Section imposes a limitation on municipal authority to set a license fee on telephone

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companies that do business in the municipal corporate limits. Section 11-51-128

provides:

Telephone companies.

(a) The maximum amount of privilege or license tax which the several municipalities within this state may annually assess and collect of persons operating telephone exchanges and long distance telephone lines in this state for the privilege of doing intrastate business within the limits of such municipalities, whether such persons are incorporated under the laws of this state or any other state, is fixed as follows:

- (1) In municipalities having not exceeding 500 inhabitants, exchange license, \$15.00, long distance license, \$8.00;
- (2) In municipalities having a population of more than 500 and not exceeding 1,000, exchange license, \$30.00, long distance license, \$8.00;
- (3) In municipalities having a population of more than 1,000 and not exceeding 2,000, exchange license, \$60.00, long distance license, \$15.00;
- (4) In municipalities having a population of more than 2,000 and not exceeding 3,000, exchange license, \$105.00, long distance license, \$27.00;
- (5) In municipalities having a population of more than 3,000 and not exceeding 4,000, exchange license, \$150.00, long distance license, \$38.00;
- (6) In municipalities having a population of more than 4,000 and not exceeding 5,000, exchange license, \$210.00, long distance license, \$53.00;
- (7) In municipalities having a population of more than 5,000 and not exceeding 6,000, exchange license, \$270.00, long distance license, \$68.00;
- (8) In municipalities having a population of more than 6,000 and not exceeding 7,000, exchange license, \$330.00, long distance license, \$83.00;
- (9) In municipalities having a population of more than 7,000 and not exceeding 8,000, exchange license, \$390.00, long distance license, \$98.00;
- (10) In municipalities having a population of more than 8,000 and not exceeding 9,000, exchange license, \$450.00, long distance license, \$113.00;
- (11) In municipalities having a population of more than 9,000 and not exceeding 10,000, exchange license, \$510.00, long distance license, \$128.00;
- (12) In municipalities having a population of more than 10,000 and not exceeding 11,000, exchange license, \$570.00, long distance license, \$143.00;
- (13) In municipalities having a population of more than 11,000 and not exceeding 12,000, exchange license, \$630.00, long distance license, \$158.00;

- (14) In municipalities having a population of more than 12,000 and not exceeding 13,000, exchange license, \$690.00, long distance license, \$173.00;
- (15) In municipalities having a population of more than 13,000 and not exceeding 14,000, exchange license, \$750.00, long distance license, \$188.00;
- (16) In municipalities having a population of more than 14,000 and not exceeding 15,000, exchange license, \$800.00, long distance license, \$203.00;
- (17) In municipalities having a population of more than 15,000 and not exceeding 16,000, exchange license, \$870.00, long distance license, \$210.00;
- (18) In municipalities having a population of more than 16,000 and not exceeding 17,000, exchange license, \$920.00, long distance license, \$233.00;
- (19) In municipalities having a population of more than 17,000 and not exceeding 18,000, exchange license, \$990.00, long distance license, \$248.00;
- (20) In municipalities having a population of more than 18,000 and not exceeding 19,000, exchange license, \$1,050.00, long distance license, \$263.00;
- (21) In municipalities having a population of more than 19,000 and not exceeding 20,000, exchange license, \$1,110.00, long distance license, \$278.00;
- (22) In municipalities having a population of more than 20,000 and less than 175,000, exchange license, \$1,110.00 for the first 20,000 inhabitants and \$60.00 for each additional 1,000 inhabitants or majority fraction thereof, up to 175,000 population; long distance license, \$278.00 for the first 20,000, and \$15.00 for each additional 1,000, or majority fraction thereof, up to 175,000 population; and
- (23) In municipalities having a population of more than 175,000, exchange license, \$12,000, long distance license, \$3,000.00.

Montgomery, as one of the largest municipalities in Alabama and with a population in excess of 175,000, is thus authorized by state law to assess an exchange license fee of \$12,000. This power, though, is not self-executing. Montgomery's ordinance merely implements this authority on the local level. These population-based restrictions, rather than serving as an impediment on local competition, as is alleged by ASCENT, instead help guarantee effective competition by tying the amount of the municipal license fee to the potential customer base available to a business within that municipality.

As Montgomery argues in its brief, § 601(c)(2) of the Telecommunications Act was designed to protect state tax schemes such as the one in Alabama. Section 601(c)(2) states:

State tax savings provision - Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supercede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation . . . 47 U.S.C. § 601(c)(2) (2000).

None of the exceptions to this restriction are present in this case. As Montgomery notes in its brief that, “Thus, the Act clearly prohibits Commission preemption of state or local tax regulations such as the Ordinance. The Commission itself has recognized the importance of tax matters to state and local governments and the considerable constraints which Section 601(c)(2) has imposed upon it. According to the Commission:

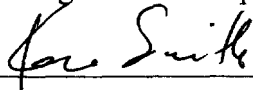
The assessment and collection of taxes and other fees is a vital function of State and local governments, indeed a necessary one to support all of those governments’ other functions. Virtually all businesses are subject to a wide array of State and local taxes, and there is no reason that telecommunications businesses should be any exception . . . Indeed, we note that our legal authority to preempt State and local tax policies is extremely limited.”

The League agrees with Montgomery that Alabama’s license tax structure is not so extreme as to authorize the Commission to strike it down as an economic barrier to competition. The League urges the Commission to deny ASCENT’s petition. To do otherwise opens the flood-gates to challenges to any local tax structure, not just in Alabama, but nationwide. The Commission should not allow itself to put in a position to substitute its judgment for that of local and state officials when it comes to the best way for local governments to fund their local budgets by licensing telecommunications companies.

For the reasons stated above, and for the reasons set out in detail in the City of Montgomery's brief, the Commission must deny ASCENT's Petition.

Respectfully submitted,

Alabama League of Municipalities

By: 

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CERTIFICATE OF SERVICE

I, Ken Smith, hereby certify that on March 19, 2001, a copy of the foregoing Comments in Opposition to Petition for Preemption and Declaratory Ruling was served by first class U.S. mail, postage paid, or by hand delivery, upon the parties listed below:

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